issued thereon, and whether, upon person's return to demanding state, he is to be prosecuted upon an indictment or information is not question for state courts to decide in extradition proceedings but is for courts of demanding state.

7. Evidence ⇐83(1)

There is presumption in extradition proceedings that law of demanding state is same as law of asylum state in absence of showing to contrary.

8. Habeas Corpus ⇐103

Where demanding state seeks to extradite an accused from asylum state for felony trial based upon information in demanding state, there must be showing at habeas corpus hearing in asylum state that law of demanding state permits such procedure.

8. Habeas Corpus ⇐103

Where there was no information and demanding state was not shown to be seeking to extradite defendant from asylum state for felony trial based upon information, defendant's reliance upon rule that where demanding state seeks to extradite an accused from asylum state for felony trial based upon information in demanding state, there must be showing at habeas corpus hearing that law of demanding state permits such procedure was misplaced.

Harkness, Friedman & Kusin by Jim Hooper, Texarkana, for appellant.

Crawford C. Martin, Atty. Gen., Austin, Nola White, Hawthorne Phillips, Robert C. Flowers and Gilbert J. Pena, Asst. Attys. Gen., Austin, and Jim Vollers, State's Atty., Austin, for the State.

OPINION

ONION, Judge.

This is an appeal from an order entered in a habeas corpus proceeding remanding the appellant to custody for extradition to the State of Louisiana, where he stands charged by "affidavit made before a magistrate issued together with a warrant thereupon" with the crime of "murder."

At the habeas corpus proceedings at which appellant was represented by counsel, the Executive Warrant of the Governor of this State, regular on its face, the requisition, application for requisition, the affidavit and warrant and other supporting papers were introduced. Thereafter the State rested. The appellant did not testify or offer any evidence at said hearing.

[1] It is well established that the introduction of the Warrant of the Governor of Texas is sufficient to make a prima facie case authorizing extradiction of the person named therein. Ex parte Kronhaus, Tex.Cr.App., 410 S.W.2d 442; Ex parte Juarez, Tex.Cr.App., 410 S.W.2d 444; Ex parte Tine, Tex.Cr.App., 432 S.W.2d 77; Ex parte Wiggins, Tex.Cr.App., 435 S.W.2d 517.

[2] Once the Governor's Warrant is placed in evidence then the burden is upon the person named therein to overcome the prima facie proof of the existence of every fact which the Texas Governor was obliged to determine before issuing the extradition warrant. Ex parte Fant, Tex.Cr.App., 400 S.W.2d 332. See also 25 Tex.Jur.2d, Extradition, § 31, pp. 182–183.

[3] Having established a prima facie case by the introduction of the Governor's Warrant, the State has no further burden of proof as to the identity of the accused unless identity is put into issue by the accused. The introduction of the Executive Warrant shifts the burden to the accused and it is then incumbent upon him to show that he is not the person charged in the demanding state. See Ex parte Moore, Tex.Cr.App., 436 S.W.2d 901; Ex parte Kaufman, 168 Tex.Cr.R. 55, 323 S.W.2d 48 and cases there cited; 39 C.J.S., Habeas Corpus § 39(a), pp. 551–552. Cf. Ex parte Thompson, 171 Tex.Cr.R. 509, 351 S.W.2d

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CHARLES E. BENSON • BARBARA S. BENSON, MRS.

October 30, 1970

Crawford C. Martin, Esq.
Attorney General of Texas
Box (R), Capitol Station
Austin, Texas 78711

Re: Cooper v. Beto
No. 893, October Term, 1970

Dear Sir:

We only docketed the above matter as a petition for writ of certiorari. The Clerk's Office thought that a petition for habeas corpus in addition to the petition for certiorari was unnecessary, so all that is pending in the Supreme Court is the petition for certiorari, and that is all that needs a response.

Enclosed is a notice that the case was docketed on October 23, 1970, as number 893, October Term, 1970, and an appearance form which you are to file with the Supreme Court. I have also sent a copy of the notice and appearance forms to James A. Bashburn.

Very truly yours,

Charles E. Benson

CHARLES E. BENSON

CEB/bg
Enc.